
IN THE SENATE OF THE UNITED STATES.

MAY 27, 1896.—Ordered to be printed.

Mr. DAVIS, from the Committee on Foreign Relations, submitted the following

REPORT:

[To accompany S. 692.]

The Committee on Foreign Relations, to whom was referred the bill (S. 692) for the relief of the legal representatives of James and William Crooks, of Canada, have considered the same and report as follows:

Bills identical in purport to the one under consideration have been favorably reported on by committees of both Houses of Congress at different sessions, and have been the subject of Executive recommendation. Among these reports the committee adopts and makes a part of this report that of the House Committee on Foreign Affairs, made at the first session of the Fiftieth Congress, and numbered 2861, wherein the facts and conclusions are clearly and justly stated.

The committee therefore recommend the passage of said bill with an amendment, striking out in line 10 thereof the words "with interest on said sum from the day of seizure."

[House Report No. 2861, Fiftieth Congress, first session.]

The Committee on Foreign Affairs, to whom was referred the bill (H. R. 3879) for the relief of James and William Crooks, of Canada, have considered the same and report as follows:

In the year 1812 the above-named James Crooks and his brother, William, British subjects, were the joint owners of a schooner, the *Lord Nelson*. The now applicants are the legal representatives of James Crooks and William Crooks.

The *Lord Nelson* was seized while plying her ordinary trade on Lake Ontario on the 5th of June, 1812, by the brig *Oneida*, commanded by Lieutenant Woolsey, of the United States Navy, nearly two weeks before the declaration of war; was carried by him into Sacketts Harbor, in the State of New York, and on the 26th of August, at the suit of the United States Government, was libeled in the district court of the United States of America for the district of New York, and afterwards a decree was made ordering the vessel to be sold and the proceeds to be brought into court, to abide the event of a suit.

The vessel was bought by Lieutenant Woolsey for the United States, taken into their service, armed, and used against Great Britain in the war.

The price paid for the vessel was \$2,999.25, a price which was below her value, as was shown by subsequent investigation. The price paid for the cargo was \$1,972.10.

These amounts were paid into the hands of Theron Rudd, the clerk of the court above mentioned.

In 1815, when peace was restored, Mr. Crooks applied to the American Government for redress.

The Government of the United States neglected to bring the libel to trial until the 11th of July, 1817, more than five years after the seizure, when a decree was made by the court of the northern district of New York pronouncing the seizure illegal, and directing the proceeds of the sale to be paid to Mr. Crooks.

In the meantime Theron Rudd, the clerk of the court, had, viz, on the 17th of May, 1817, absconded with all the funds of the court, and no part thereof was paid to the owners of the *Lord Nelson*.

On the 3d of February, 1819, President Monroe sent a message to Congress on the subject, stating that—

“These injuries have been sustained under circumstances which appear to commend strongly to the attention of Congress the claim to indemnity for the losses occasioned by them, which the legislative authority is alone competent to provide.”

On the 11th of February, 1819, Mr. Goldsborough, of the Committee on Claims of the Senate, reported a bill for the relief of Messrs. Crooks, which was twice read by unanimous consent. On being brought up in Committee of the Whole it was referred to the Committee on Finance and engrafted on the general appropriation bill for the support of the Government. The bill so amended was returned to the House of Representatives, but the House refused to accede to the amendment because the circumstances had not been investigated by a committee of the House.

From this period until the year 1831 there were numerous communications between the Governments on the subject.

The claim was again presented to the House of Representatives on the 29th of May, 1834, and by the order of the House referred to the Committee on Foreign Affairs. No report was made by that committee.

In 1836 the claim was submitted to the Committee on Claims of the House, who reported (H. R., Twenty-fourth Congress, first session, Report 814, on the 24th of June, 1836), after a review of the facts:

“The committee entertain the opinion that the petitioners are entitled to relief. This Government has at all times maintained that foreign Governments are liable for losses sustained by our citizens by illegal captures.

“There is no pretense in this case that the capture was legal. The decree of the court put that question to rest.”

And the committee—

“Resolved, That the petition and papers of James Crooks and William Crooks be referred to the Secretary of the Navy, to ascertain (on giving notice to the said James and William Crooks, or to their agent, of the time and place of taking testimony) the value of the vessel called the *Lord Nelson*, captured by Lieutenant Woolsey on Lake Ontario on the 5th June, 1812, at the time of the said capture, and the cargo then on board of said vessel, and that he report the same at the next session of Congress.”

The investigation took place, and on the 11th of February, 1837, the Secretary of the Navy reported—

“That from a careful examination of the evidence contained in these papers I am of the opinion that the value of the *Lord Nelson* at the time of her capture may be estimated at \$5,000, and the value of her cargo \$2,943.76; total value of the vessel and cargo, \$7,943.76.”

On February 22, 1837, the Committee on Claims made the following report:

The Committee on Claims, to whom was referred the petition and papers of William Crooks and James Crooks, report:

That this case was examined at the last session of Congress, and a report was made thereon on the 24th of June, 1836, to which this committee refer and make the same a part of this report.

The House, on the recommendation of the committee, referred the subjects contained in the petition to the Secretary of the Navy to report, first, as to the value of the vessel when she was captured, on the 5th of June, 1812; and, secondly, the value of her cargo at that period.

The Secretary appointed a commissioner at Buffalo to take testimony, and instructed Mr. Barker to attend and put interrogatories. The rights of the United States have been amply guarded.

The Secretary reports the value of the vessel at the time of her capture was \$5,000, and that the value of her cargo was \$2,943.76. It does not appear from the petition to whom the cargo belonged, but its value was claimed by the petitioners.

The Committee find, from the testimony recently taken, that the cargo did not belong to them. They therefore, in the bill herewith reported, do not make any provision for paying for the cargo, but leave that subject to be investigated when the owners shall apply for relief; and they wish to be distinctly understood they do not make any decision as to the liability of the United States to pay for the cargo. It appears many of the articles were returned to the owners and accepted by them. They complain that the articles were not all of them returned, and that those they did receive were in a damaged state. All of these subjects, however, will be left to be decided if the owners of the cargo shall present their claims.

The committee concur with the Secretary of the Navy in the estimated value of said vessel.

The case of Cyrenus Hall was a seizure on Sandusky Bay. Mr. Hall was a citizen of Canada. He was relieved by an act approved on the 2d of March, 1833. He was allowed interest from the time his vessel was seized until the decree dismissing the libel was rendered.

From that time until the presentation of the claim interest was refused.

Interest was allowed from the time the claim was presented until the money was paid.

In that case the plaintiff suffered many years to elapse before he presented his claim. In the present case application was made for remuneration to the constituted authorities before the decree of acquittal was rendered. The suit was permitted to be continued term after term, against the remonstrances of the petitioner. In allowing interest in this case, the committee do not design to establish a new principle, nor do they intend to set a precedent that will be applicable to the claims of American citizens. They allow interest from State policy as our citizens have claimed it where their property has been unlawfully seized by the subjects of a foreign power, and they will undoubtedly claim it hereafter should their property be illegally seized.

The United States should demand nothing of a foreign Government that they are not willing to concede under a change of circumstances.

In this case a majority of the committee think and direct the chairman to report that interest be allowed from the time of the capture until the passage of the act appropriating the money. They consider the seizure was without any semblance of justification, and that inasmuch as the petitioners had pressed their claim from the time of the seizure to February, 1819, either before the courts on the libel or to the executors through the British legation, and inasmuch as the Executive and the Senate recognized the validity of the claim in 1819, and the House of Representatives did not decide against it, that it was obligatory on the Government of the United States to have resumed the consideration of the subject without further application by the British Government; that, in fact, the claim was one of a national concern, and should have been so treated by the United States.

On the 14th of December, 1837, a bill was reported to the House providing for the payment of the claim, with interest from the day of the seizure until the approval of the relief act by the President, which was read twice and committed to the Committee of the Whole House for the next day. This bill passed the House of Representatives, but failed to pass the Senate.

In the year 1848 Mr. Crooks again presented a petition to the House, and the committee to whom it was referred reported adversely on the ground that the petitioners had consented to the decree for sale, and so could make no claim for the amount lost by the defalcation of the clerk.

In February, 1850, the State Department recommended the Committee of Ways and Means of the House to include in the civil and diplomatic appropriation bill \$5,000, and full legal interest on the same from the date of her capture.

Mr. Clayton's letter on the subject is as follows:

FEBRUARY 14, 1850.

SIR: The attention of this Department has been called to the claim of William Crooks and James Crooks, British subjects, against the United States for the capture of a vessel called the *Lord Nelson* by Lieutenant Woolsey, on Lake Ontario, in the year 1812. An examination of the subject has led this Department to the conclusion that the claim is meritorious, and adopting the language of the special message to Congress in 1819 in regard to it, I feel satisfied that "these injuries have been sustained under circumstances which appear to recommend strongly to the attention of Congress the claim to indemnity for the losses occasioned by them, which the legislative authority is alone competent to provide."

I respectfully recommend, therefore, that an appropriation be included in the civil and diplomatic appropriation bill for the value of the vessel, namely, \$5,000, and the full legal interest on the same from the 5th of June, 1812, the date of her capture.

I am, sir, very respectfully, your obedient servant,

JOHN M. CLAYTON.

On the 3d of March, 1851, the Committee on Foreign Affairs of the House reported adversely to the claim without assigning any reason.

Mr. Crooks then brought the case before the Court of Claims, and judgment was delivered on the 28th of November, 1859, the court being divided in opinion. The opinion delivered by Judge Loring awarded to the claimant \$183.50, which amount was arrived at as being the proportion to which the claimants were entitled out of the sum recovered by the United States Government from Rudd, the embezzling clerk.

This judgment goes on the theory that the court had no jurisdiction to treat the claimants other than if they were American citizens. Their equities were admitted, but the court held it could not go outside statute law to grant relief.

Scarburgh, J.'s, opinion was that the claimant was entitled to the full value of the vessel, namely, \$5,000, and interest from the date of capture.

This report of the Court of Claims was submitted to Congress (Report Court of Claims, first session Thirty-sixth Congress, Report No. 240), but no action was taken.

In March, 1860, the Hon. Mr. James Crooks, the survivor of the original claimants, died. Since 1860 no application has been made to Congress. The petitioners allege that it was thought it would have been useless to ask for attention to this claim during the excitement consequent upon the civil war of the United States, and that the son of the Hon. James Crooks, in whose hands the papers were placed, became insane, and it was impossible to obtain from him an explanation of the nonprosecution of the claim for the last few years. The present petitioners allege they have lost no time since they have been in a position to urge the claim.

On the 1st of April, 1886, the claim was again commended to the favorable consideration of Congress by the message of the President referred to this committee (Ex. Doc. No. 161, Forty-ninth Congress, first session).

The Secretary of State's report refers to Mr. Clayton's recommendation that has been set forth in full above, and states that a careful reexamination of the subject has led the Department of State to the conclusion that the claim is a meritorious one, and that the injuries complained of were sustained under circumstances which appear to recommend strongly to Congress the claim to indemnity for the losses occasioned by them. The report further submits that the long period which has elapsed since the claim originated should not prejudice its careful consideration.

The committee, after careful consideration of the facts, concur in the recommendation of the State Department.

There is no room for doubt that the vessel was illegally seized, taken possession of by and used for the purposes of the United States Government, and that the owners, who are represented by the present claimants, have never received any pay for the vessel. The claim was persistently pressed during the lifetime of the original owner, and has at different times received the approval of the Executive, the Senate, and the House of Representatives. The fact of the decree for the sale of the vessel showing on its face that it was made by consent, has raised the question whether the claimants did not thereby assume the risk of the payment of the money into court. We do not think any weight should be attached to this contention. The consent, if given at all, must have been given by an agent, as war having been declared, it was impossible for the owner to have been present, and such consent was probably given as the best that could be done under the circumstances to save the absolute forfeiture of the vessel. The fact remains that the claimants have received an injury by the wrongful act of an officer of the United States Navy, of which act the United States Government took advantage and compensation for which has never been made to the claimants.

The committee think that a liberal and not a technical view should be taken of the matter, and that the same reparation which would be exacted by the United States for a similar wrong to one of its citizens ought to be frankly rendered by Congress in this case. Moreover, it is doubtful whether the claimants could in any way be affected by the default of the clerk of the district court of New York. The wrong complained of is the illegal capture of the vessel, and the subsequent proceedings are referred to merely as evidence that the seizure was illegal.

The adjudication on the case in the Court of Claims did not touch its merits. Judge Loring, who delivered the judgment of the court, took the ground that if the United States Government was liable it was to the nation of the individual injured and not to the individual, and so the matter should be arranged by treaty. Judge Scarburgh, the dissenting judge, stated that, while the claim properly pertained to the treaty-making Department of the Government, under the circumstances of having been recommended by the President, and so recognized by the Government, it should be allowed, and that by the principles of international law the petitioner was entitled to relief.

The committee think that the fact of the petitioners having appealed directly to the United States Government for relief instead of through the British Government should not be a bar of their obtaining redress.

The committee concur in the report of the Committee on Claims presented to the House on February 22, 1837, second session Twenty-fourth Congress, Report No. 243, and recommend that interest should be allowed.

It appears that the original claimants, James and William Crooks, were equal owners of the *Lord Nelson*, and that each has left descendants. The committee has therefore deemed it advisable that the payments should be made from the Treasury directly to the representatives of each.

The claimants have asked that they should be compensated for the large expense they have been put to for the prosecution of this claim for so many years, and also that allowance should be made because the value of money was greater when the

claim arose than it is at present. The committee do not recommend any allowance to be made on these accounts.

Thus far your committee has followed, and largely adopted, the report made by the Hon. John W. Daniel on behalf of this committee, in the second session of the Forty-ninth Congress, being Report No. 3743. But it is proper to state further, that in the investigation of the claim our attention was attracted to an adverse report made in the case by a committee of the Twenty-sixth Congress, charged with its examination. That the whole case might, if possible, be cleared from doubt or any misapprehension, a letter of inquiry was addressed to the Honorable Secretary of State.

A copy of this letter, together with the Secretary's reply, and a copy of the dispatch from Mr. Rush, referred to therein, are given below:

In re James and William Crooks, claimants, for indemnity for loss of the *Lord Nelson*.

HOUSE OF REPRESENTATIVES,
Washington, D. C., April 4, 1888.

SIR: As chairman of the subcommittee (Foreign Affairs) I respectfully ask for the following information: In Senate Documents, first session Twenty-sixth Congress, 1839-40, volume 6, page 430, it appears that the committee charged with the consideration of the above-stated claim made an adverse report, upon the ground that the British Government were not favorably disposed to award indemnity to the owners of *The Lydia*, an American vessel seized by a British cruiser in the Bermudas, under circumstances similar to the seizure of the *Lord Nelson*.

What I desire to know is, if the State Department shows what relief, if any, has been granted to the owners of *The Lydia*, and what is the present condition of said claim.

I have the honor to be, very respectfully, your obedient servant,

J. S. COTHRAN,
Chairman Subcommittee.

HON. THOMAS F. BAYARD,
Secretary of State.

DEPARTMENT OF STATE,
Washington, April 26, 1888.

SIR: In reply to your letter of the 4th instant, asking what relief, if any, has been granted to the owners of *The Lydia*, and what is the present status of said claim, I have the honor to inform you that a thorough search in the files of this Department fails to show any paper on the subject except the dispatch from Mr. Rush, of the 29th of September, 1819, alluded to on page 4 of H. R. Ex. Doc. 161, Forty-ninth Congress, first session, nor does it appear that any claim for relief has ever been presented to this Department by the owners of *The Lydia*.

I have the honor to be, sir, your obedient servant,

T. F. BAYARD.

JAMES S. COTHRAN,
House of Representatives.

[Rec'd Nov. 25. Duplicate No. 93.]

LONDON, September 29, 1819.

SIR: On the twenty-third instant I received a representation from Messieurs W. and E. Lawrence, of this city, respecting the case of the ship *Lydia*, of New York, an American vessel belonging to Stephen Hathaway, George Hathaway, and Isaac Waite, citizens of the United States. The vessel was captured by the British during the late war, and condemned in the court of vice-admiralty at Bermuda. The sentence was reverted in London and restitution ordered to the claimants. The ship being sold at Bermuda the proceeds were paid into court to abide the result of the appeal; but since the reversal of the sentence it appears that through the default of the proper officers of the court in that island the proceeds are not now forthcoming, and the owners are likely to sustain a total loss unless this Government will interpose and protect them against the misconduct or other inability of its own officers. It is to procure this interposition that my official aid is invoked by Messieurs Lawrence, who are the agents of the owners. I do not think it necessary to trouble the Department with a copy of the correspondence that has passed between us. It will be sufficient for the present to state that, perceiving that the ship when captured was

sailing under the protection of a British license, I have declined interfering. She was proceeding in ballast from New York to Charleston, thence to carry a cargo of provisions to Cadiz. The license which she had on board would have rendered her prize of war had she fallen into the hands of a cruiser of our country. I have deemed it proper to state thus much of the case, to anticipate whatever representations may be made by the parties themselves. I have said to them that, if I have misjudged the merits of their application in withholding my assistance, an appeal to the Department of State will be open to them.

Count Palmella has lately got back again to this place from Paris. I learn from him that affairs between Portugal and Spain still remain wholly unsettled. The Count proceeds to Rio Janeiro before long to take upon himself the office of foreign affairs.

I enclose the Times of the fourth of the present month. It contains a publication purporting to exhibit the proceedings of the general assembly of Nova Scotia in the month of March, on the subject of the convention concluded with this Government last autumn. I have no other knowledge of the existence of these proceedings than is afforded by this newspaper publication, and would incline to hope, from the nature of some of the sentiments and language towards the United States, that it must be spurious.

I have the honor, etc.,

Honorable JOHN QUINCY ADAMS,
Secretary of State

Signed) RICHARD RUSH.

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